

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:07CR299
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
HOMER T. CAVE,)	
)	
Defendant.)	

The Court has received the Presentence Investigation Report ("PSR"), the Defendant's objections thereto (Filing No. 36), the Defendant's motion for downward departure and supporting brief (Filing Nos. 34, 35), and the government's adoption of the PSR (Filing No. 31). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

OBJECTIONS TO PSR

The Defendant objects to ¶¶ 18 and 28 (number of images), 25 (prepubescent minor or minor under twelve years). The additional objections appear to be related to the objections previously mentioned or the motion for downward departure and need not be addressed separately. The objections are discussed below.

¶¶ 18 and 28 (Number of Images)

The Defendant objects to the 4-level enhancement in ¶ 28 under U.S.S.G. § 2G2.2(b)(7)(C) for the 494 images attributed to the Defendant. The objection will be heard at sentencing, and the burden is on the government by a preponderance of the evidence.

¶25 (*Prepubescent Minor or Minor Under Twelve Years*)

The Defendant objects to the 2-level enhancement in ¶ 25 under U.S.S.G. § 2G2.2(b)(2) because the material involved in the offense allegedly involved a prepubescent minor or a minor who had not yet attained the age of twelve years. The objection will be heard at sentencing, and the burden is on the government by a preponderance of the evidence.

DOWNWARD DEPARTURE

The Defendant's motion for downward departure will be heard at sentencing.

IT IS ORDERED:

1. The Defendant's Objections to ¶¶ 18 and 28 (number of images) and 28 (prepubescent minor or minor under age twelve) of the Presentence Investigation Report (Filing No. 36) will be heard at sentencing;
2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;
3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final;

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing;

6. The Defendant's motion for downward departure will be heard at sentencing; and

7. If the parties require more than the allotted thirty (30) minutes for the entire sentencing hearing, they should immediately contact Edward Champion and reschedule the hearing.

DATED this 3rd day of June, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge